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No. 821

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In The
Supreme Court of the United States

OCTOBER TERM, 1967

PAT BELL AND HAZEL BELL, *Petitioners,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI BY PETITIONERS

ROBERT J. WOOLSEY of
FARMER, WOOLSEY, FLIPPO
& BAILEY
602 Natl. Bk. of Tulsa Bldg.
Tulsa, Oklahoma 74103
Attorneys for Petitioners

INDEX

Page

STATUTES

7 Stat. 1007 3

50 Stat. 524 3

60 Stat. 1071 3

65 Stat. 197 3

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

This Petition for Rehearing the judgment of the Court entered herein on the 15th day of January, 1968, denying petitioners' Petition for a Writ of Certiorari is filed upon grounds that were available to petitioners although not

previously presented. The question that needs answering is can a citizen rely on arrangements made by local agents when made within the law.

In the Opinion of the Tenth Circuit, Appendix A Page V, the Tenth Circuit says:

> "From the proceeds of the $32,000 loan, $21,548.89 was used to purchase 397 head of steers and heifers. 64 of these cattle were sold immediately and the money from that sale was placed in a bank and used for operating expenses. A portion of the loan funds was used to pay a local feed dealer, and the feed purchased was with the knowledge and approval of the local committee being used to full feed approximately 80 of 189 head of cattle appellants had originally owned."

A significant statement which we will discuss briefly is set forth in the Loan Application. See Petition for Certiorari, Page 12. This statement is as follows (signed by Elbert E. Pace, County Supervisor):

> "This loan is made to cover 1956 operations and overlaps a previous loan for 1955. The 55 loan is to be paid in full when 189 calves sold. He is to turn in all sales from 189 Calves (less an amount determined by committee to meet some payments are not eligible in SL loan). *For this reason* we are including practically all operating expenses in the loan. Loan funds will be budgeted."

Thus, it will be seen that from the proceeds of the sale of calves which he already had on hand at the time he made

the loan in question. Some payments were to be made for which there was no eligibility under the special livestock loan.

We submit that the petitioners, counsel for the petitioners, and both courts below have overlooked the fact the borrower was eligible under an early statute which was not repealed until 1961. This statute is as follows, Title 7, Section 1007, as follows:

> "Eligible Borrowers; terms
>
> "(a) The Secretary may make loans to farmers and stockmen who are citizens of the United States for the purchase of livestock, seed, feed, fertilizer, farm equipment, supplies, and other farm needs, the cost of reorganizing the farming enterprise or changing farming practices to accomplish more diversified or more profitable farming operations, the refinancing of existing indebtedness, and for family subsistence." (50 Stat. 524; 60 Stat. 1071; 65 Stat. 197)

Inasmuch as the original exhibit of the application that is a part of the record in this case shows that the state level wrote the word "No" opposite the portion of the ineligible payments and also the word "No" opposite the following:

> "We include funds to purchase 250 pullets now on the farm but owned by his mother."

we believe the committee was trying to operate under this production and subsistence loan. We, thus, believe

that the fact the committee did have the power as representative of the Secretary of Agriculture to make such an operating loan, that this is a substantial ground available to petitioners and not previously presented, so the court should consider the Petition for Certiorari.

In addition thereto we want to point out an incorrect statement in the Memorandum of the Government filed by the Solicitor General. At page 3 of the Solicitor's Memorandum, counsel says:

> "[A]nd that petitioners would sell the 189 head of cattle that they already owned and apply the proceeds in full payment of the previous loan from the Farmers Home Administration. * * *"

This is not so. See page 12 of the Petition for Certiorari where it quotes from the application of the petitioners:

> "The 55 loan is to be paid in full when 189 calves are sold. He is to turn in all sales from 189 calves (less an amount determined by committee to meet some payments not eligible in SL loan). * * *"

The committee loaned him the money out of the Special Livestock Loan, intending to use the proceeds from the 189 calves to loan him or extend him credit to feed the cattle and thus protect the operation. It is clear that the Committee did not set up any funds in the loan to feed or graze the 189 older cattle. Instead they were feeding the 189 cattle on credit of a local feed dealer who was to be paid out of sales from the 189 *when made*—This the

County Supervisor could do under prior law. The 189 cattle could not be considered as a part of the burden of the loan in suit. This is what is meant when the Committee said (less an amount determined by the Committee to meet some payments not eligible in SL) (Special Livestock) Loan.

There were actually two sets of cattle, big and little. It was not intended by the supervisor or the Committee to finish the little cattle, but just get them ready to sell or finish (with flexibility as to weather and prices). This was was wrecked by the State level representatives and by Washington. The handling of the 189 on credit plan may have been a delay in marketing due to conditions. This was approved by Committee.

In the Government's Memorandum at page 3, the Government seeks to put the blame on the petitioners for overbuying the cattle. We submit this was done with the full acquiescence of the committee. The Government's Memorandum says at page 3:

> "At the time petitioners obtained the loan, they were operating 900 to 1,000 acres, which would only support approximately 100 head of cattle (259 F. Supp. at 603). With the proceeds of the loan they purchased approximately 333 head of cattle for about $20,000, instead of 250 head for $16,000 as set forth in their loan application. Furthermore, they retained the 189 head of cattle which were to have been sold in the fall of 1955 to repay the earlier loan. * * *"

This is erroneous. They actually bought 397 and sold 64, leaving 333, but this was permitted by the committee. The memorandum says that when the petitioners obtained the loan they were operating 900 to 1,000 acres which would support approximately 100 head of cattle.

In the Government's Memorandum the Solicitor says at page 4:

> "In March 1956, petitioners received a second loan of $5,750 to enable them to lease a wheat pasture upon which to graze some of their cattle."

The committee under pressure of the Farm Home Administration went contrary to its loan plan, as appears at page 12 of the Petition. This plan provides:

> "This loan is based upon the land presently operated with some purchased feed."

If the act were narrowly construed and the committee under the thumb of the state level of Farm Home Administration, this would possibly be true, but the committee authorized the following:

1. 333 new cattle;
2. Feed them (by extending credit from the proceeds of the sale of 189 cattle pursuant to the earlier act referred to);
3. Allowed him to keep 103 year-old yearlings, which the committee knew in its judgment would have to be fed, and the Committee allowed it.

We submit the petitioners should be allowed to rely on the judgment and actions of the committee. The whole arrangement was a contract between the committee representing the Government and the petitioners. We submit the Government should be estopped from denying the authority of the committee to do what it did at the expense of the rancher who was not up on the finer points of technical rules where Farm Home Administrators could overrule the committee who did not have the Congressional power to overrule the committee.

Petitioners can't find no place where they agreed at the time of acceptance of the new arrangement that the committee was not allowed to take another look at the situation in the fall of 1956

The committee in the fall of 1956 when they sold the cattle told Bell it was out of their hands.

The committee intended local feed credit, probably under the earlier act, to support the operation and the Bells relied on this.

For these reasons the Petition for Rehearing should be granted.

Respectfully submitted,

ROBERT J. WOOLSEY of
FARMER, WOOLSEY, FLIPPO
& BAILEY

602 Natl. Bk. of Tulsa Bldg.
Tulsa, Oklahoma 74103

Attorneys for Petitioners

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, Robert J. Woolsey, certify that I have read the foregoing Petition and I certify that the Petition for Rehearing is presented in good faith and not for delay and that the Petition is restricted to substantial grounds set forth in the Petition for Rehearing which were available to the Petitioners although not previously presented.

Dated this 3d day of February, 1968.

Robert J. Woolsey